

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 01-244
(Judge Charles W. Cope)

Case No. SC01-2670

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SPECIAL COUNSEL'S MOTION

TO ALLOW WITNESSES TO TESTIFY BY VIDEOCONFERENCE

The Special Counsel hereby moves for an order allowing Officer Philip Nash, Corporal John Nyunt, and Dr. Nina Jeanes to appear and testify in the Special Counsel's case-in-chief at the final hearing via live video teleconference and states:

1. Officer Nash witnessed Respondent publicly intoxicated on the first night in question. He was also involved in the arrest and present for much of the booking of Respondent the following evening.
2. Corporal Nyunt apprehended Respondent on the second night and was present for the booking.
3. Dr. Jeanes was present in the hotel room when Respondent allegedly tried to break in, and she is the one who called the police.
4. Officer Nash and Corporal Nyunt are full-time police officers with the Carmel-by-the-Sea, California Police Department. Dr. Jeanes lives in Maryland where she has an active practice as a gynecologist.
5. Because of the great distances between these witnesses and Pinellas County and because of their professional commitments, it would be extremely burdensome to require them to travel to Pinellas County to testify in person at the final hearing. Moreover, each of these witnesses are beyond the jurisdiction of Florida courts and thus cannot be compelled to attend.
6. The Special Counsel's law firm has an office in San Francisco, which is near Carmel-by-the-Sea, with video conferencing equipment compatible with the equipment at the Pinellas County

Courthouse. The Special Counsel's law firm also has an office in Washington, D.C., which is close to Dr. Jeanes, with similar equipment.

7. The Special Counsel has conferred with the technology personnel at the courthouse and at his San Francisco and Washington offices to confirm the compatibility of the equipment. This equipment would allow the witnesses to be directly examined and cross examined live and in the view of the Hearing Panel. It would also allow the Hearing Panel to ask questions of the witnesses.

8. Pursuant to Rule 1.330(a)(3), Florida Rules of Civil Procedure (applicable to these proceeding by incorporation through Rule 12(a), Florida Judicial Qualifications Commission Rules), the Special Counsel could depose these out-of-state witnesses and use their depositions at trial. Allowing them to testify live via video conference would be preferable, however, because it would allow both sides to ask questions that may arise at the hearing and it will also allow the members of the Hearing Panel to ask any questions they may have.

9. Respondent has already deposed each of these three witnesses. Respondent will suffer no prejudice if the witnesses are allowed to appear by video conference.

10. The Special Counsel has conferred with Respondent's counsel, who related that Respondent will object to this motion.

11. The Special Counsel requests a ruling by the time of the Prehearing Conference set for Monday, March 18, 2002, so that if the motion is denied, the Special Counsel will have time to take the witnesses depositions for use at trial.

WHEREFORE, the Special Counsel respectfully requests the Hearing Panel to enter an order authorizing the Special Counsel to call Office Philip Nash, Corporal John Nyunt, and Dr. Nina Jeanes

at the final hearing in this matter via video teleconference.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and regular U.S. mail to: **Louis Kwall, Esq.**, Kwall, Showers & Coleman, P.A., 133 N. St. Harrison Ave., Clearwater, Florida 33755; **Robert W. Merkle, Jr., Esq.**, Co-Counsel for Respondent, 5510 W. La Salle Street, #300, Tampa, Florida 33607-1713; **Judge James R. Jorgenson**, Chair of the Judicial Qualifications Commission Hearing Panel, 3rd District Court of Appeal, 2001 S.W. 117th Ave., Miami, Florida 33175-1716; **John Beranek, Esq.**, Counsel to the Hearing Panel of the Judicial Qualifications Commission, P.O. Box 391, Tallahassee, Florida 32301; **Brooke S. Kennerly**, Executive Director of the Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; **Thomas C. MacDonald, Jr., Esq.**, General Counsel to the Investigative Panel of the Judicial Qualifications Commission, 100 North Tampa Street, Suite 2100, Tampa, Florida 33602 this 15th day of March, 2002.

By:
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